

before said container has initially been opened, a second open condition and a third re-closed condition;

wherein, in said first condition, said hinge portion is aligned with said stationary portion;

wherein in said second condition, said hinge portion is misaligned with said stationary portion;

wherein, in said third condition, said hinge portion releasably retains said lid in said re-closed condition.

Please cancel claims 3, 10, 19, 23 and 27, without prejudice or disclaimer.

REMARKS

Claims 1-27 were pending in the application prior to the amendment presented herein. Claims 1, 4, 8, 11, 14, 16, 17, 20 and 24 have been amended. Claims 3, 10, 19, 23 and 27 have been canceled. Claims 2, 5-7, 9, 12, 13, 15, 18, 21, 22, 25 and 26 remain in the application unchanged. Accordingly, after entry of this amendment, claims 1, 2, 4-9, 11-18, 20-22 and 24-26 will be pending in the application. Reexamination and reconsideration are requested.

Attached hereto is a marked-up version of the changes made by the current amendment. The attached version is captioned "**Version with Markings to show Changes Made**".

I. Legal Basis for Prior Art Rejections Applied in the Office Action

Legal Basis for Anticipation under 35 U.S.C. §102

The standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements.

Hybritech, Inc. v. Monoclonal Antibodies, Inc., 231 USPQ 81, 90 (Fed. Cir. 1986).

Legal Basis for Obviousness under 35 U.S.C. §103

The test for obviousness under 35 U.S.C. 103 is whether the claimed invention would have been obvious to those skilled in the art in light of the knowledge made available by the reference or references. In re Donovan, 184 USPQ 414, 420, n. 3 (CCPA 1975). It requires consideration of the entirety of the disclosures of the references. In re Rinehart, 189 USPQ 143, 146 (CCPA 1976). All limitations of the Claims must be considered. In re Boe, 184 USPQ 38, 40 (CCPA 1974). In making a determination as to obviousness, the references must be read without benefit of applicants' teachings. In re Meng, 181 USPQ 94, 97 (CCPA 1974). In addition, the propriety of a Section 103 rejection is to be determined by whether the reference teachings appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed substitution, combination, or other modifications. In re Lintner, 173 USPQ 560, 562 (CCPA 1972).

A basic mandate inherent in Section 103 is that a piecemeal reconstruction of prior art patents shall not be the basis for a holding of obviousness. It is

impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. In re Kamm, 172 USPQ 298, 301-302 (CCPA 1972). Phrased somewhat differently, the fact that inventions of the references and of applicants may be directed to concepts for solving the same problem does not serve as a basis for arbitrarily choosing elements from references to attempt to fashion applicants' claimed invention. In re Donovan, 184 USPQ 414, 420 (CCPA 1975). It is also clearly established in the case law that a change in the mode of operation of a device which renders that device inoperative for its stated utility as set forth in the cited reference renders the reference improper for use to support an obviousness-type rejection predicated on such a change. See, e.g. Diamond International Corp. v. Walterhoefer, 289 F.Supp. 550, 159 USPQ 452, 460-61 (D.Md. 1968); Ex parte Weber, 154 USPQ 491, 492 (Bd.App. 1967). In addition, any attempt to combine the teaching of one reference with that of another in such a manner as to render the invention of the first reference inoperative is not permissible. See, e.g., Ex parte Hartmann, 186 USPQ 366 (Bd.App. 1974); and Ex parte Sternau, 155 USPQ 733

In the case of In re Wright, 6 USPQ 2d 1959 (CAFC 1988), the CAFC decided that the Patent Office had improperly combined references which did not suggest the properties and results of the applicants' invention nor suggest the claimed combination as a solution to the problem which applicants' invention solved.

The CCPA reached this conclusion after an analysis of the prior case law, at p. 1961:

We repeat the mandate of 35 U.S.C. 103: it is the invention as a whole that must be considered in obviousness determinations. The invention as a whole embraces the structure, its properties, and the problem it solves. See, e.g., Cable Electric Products, Inc. v. Genmark, Inc., 770 F.2d 1015, 1025, 226 USPQ 881, 886 (Fed. Cir. 1985) ("In evaluating obviousness, the hypothetical person of ordinary skill in the pertinent art is presumed to have the 'ability to select and utilize knowledge from other arts reasonably pertinent to [the] particular problem' to which the invention is directed"), quoting In re Antle, 444 F.2d 1168, 1171-72, 170 USPQ 285, 287-88 (CCPA 1971); In re Antonie, 559 F.2d 618, 619, 195 USPQ 6, 8 (CCPA 1977) ("In delineating the invention as a whole, we look not only in the claim in question... but also to those properties of the subject matter which are inherent in the subject matter and are disclosed in the Specification") (emphasis in original).

The determination of whether a novel structure is or is not "obvious" requires cognizance of the properties of that structure and the problem which it solves, viewed in light of the teachings of the prior art. See, e.g., In re Rinehart, 531 F.2d 1048, 1054, 189 USPQ 143, 149 (CCPA 1976) (the particular problem facing the inventor must be considered in determining obviousness); see also Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co., 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984) (it is error to focus "solely on the product created, rather than on the obviousness or notoriety of its creation") (quoting General Motors Corp. v. U.S. Int'l Trade Comm'n, 687 F.2d 476, 483, 215 USPQ 484, 489 (CCPA 1982), cert. denied, 459 U.S. 1105 (1983)).

Thus the question is whether what the inventor did would have been obvious to one of ordinary skill in the art attempting to solve the problem upon which the inventor was working. Rinehart, 531 F.2d at 1054, 189 USPQ at 149; see also In re Benno, 768 F.2d 1340, 1345, 226 USPQ 683, 687 (Fed. Cir. 1985) ("appellant's problem" and the prior art present different problems requiring different solutions").

A reference which teaches away from the applicants' invention may not properly be used in framing a 35 U.S.C. 103 rejection of applicants' claims. See United States v. Adams, 148 USPQ 429 (Sup. Ct. 1966).

**II. 35 U.S.C. §102(b) Rejection of Claims 1, 2, 7, 8 and 14 over Wein**

Claims 1, 2, 7, 8 and 14 stand rejected under 35 U.S.C. §102(b) as being anticipated by Wein (U.S. 5,044,503). Reexamination and reconsideration are requested.

Claims 1, 2 and 7

Applicants' claim 1, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least one wall;

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said lid to an open position, in which product can be dispensed from said container, by applying an opening force thereto, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said lid to a closed position by applying a closing force thereto;

releasably retaining said lid in said closed position by engaging at least a portion of said panel with at least a portion of said wall; and

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wherein said container further comprises a sheet of material covering said hole while said container is in said open position.

Independent claim 1 has been amended herein to now include the limitations of dependent claim 3 as highlighted above. Claim 3 has been canceled. Claim 4 has been amended to depend from claim 1 rather than from canceled claim 3.

Since claim 3 is not rejected as being anticipated by Wein, the incorporation of claim 3 into claim 1 overcomes the Examiner's rejection.

Claims 2 and 7 are allowable at least as depending from allowable base claim 1.

Claim 8

Applicants' claim 8, as amended herein, recites the following:

A container comprising:  
a body portion having at least one wall;  
a lid movably attached to said body portion;  
wherein said container includes a first condition before said container has initially been opened, a second open condition in which product can be dispensed from said container and a third re-closed condition;

wherein, in said first condition, a panel is attached to both said at least one wall of said body portion and said lid;

wherein in said second condition, said panel remains attached to said lid but has been removed from said at least one wall member, thus leaving a hole in said at least one wall;

wherein, in said third condition, at least a portion of said panel is releasably engaged with at least a portion of said wall; and

**a sheet of material covering said hole while said container is in said second open condition.**

Independent claim 8 has been amended herein to now include the limitations of dependent claim 10, as highlighted above. Claim 10 has been canceled. Claim 11 has been amended to depend from claim 8 rather than from canceled claim 10.

Since claim 10 is not rejected as being anticipated by Wein, the incorporation of claim 10 into claim 8 overcomes the Examiner's rejection.

Claim 14

Claim 14, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;

a hinge portion formed in said second wall, **said hinge portion being movably attached**

to said lid;

moving said lid to an open position by applying an opening force thereto;

moving said lid to a closed position by applying a closing force thereto; and

releasably retaining said lid in said closed position by engaging at least a portion of said hinge portion with at least a portion of said second wall.

Claim 14 recites the following:

**said hinge portion being movably attached to said lid**

Wein does not disclose a hinge portion movably attached to a lid in a manner as recited in claim 14. The Examiner states the following regarding Wein in paragraph 2 of the Office action:

Wein teaches a method of opening and closing a container comprising, a body, a lid 164 (Fig. 38), a panel formed in at least one wall of the body portion at 155 and 160. Panels 155 and 160 are attached to the lid 164 as shown in Fig. 38 ....

The Examiner, thus, takes the position that applicants' recited "lid" is readable on the lid 164 of Wein and that applicants' "hinge portion" is met by the panels 155 and 160 of Wein. With reference, however, to Fig. 38 of Wein, it can be seen that the panels 155 and 160 are not "movably attached" to the lid 164 as required by applicants' claim 14. Accordingly, claim 14 is not anticipated by Wein. As noted previously, the standard

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for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

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**III. 35 U.S.C. §102(b) Rejection of Claims 14-26 over  
Moeller**

Claims 14-26 stand rejected under 35 U.S.C. §102(b) as being anticipated by Moeller (U.S. 4,948,038). Reexamination and reconsideration are requested.

Claims 14-16

Claim 14, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall; a hinge portion formed in said second

wall, said hinge portion being movably attached to said lid;

moving said lid to an open position by applying an opening force thereto;

moving said lid to a closed position by applying a closing force thereto; and

releasably retaining said lid in said closed position by engaging at least a portion of said hinge portion with at least a portion of said second wall.

Claim 14 has been amended herein to include the limitation that the hinge portion is "formed in said

second wall". This limitation is fully supported by applicants' originally filed application with reference, for example, to drawing figure 15 where the hinge portion 352 is shown as being formed from a wall of the body of the container. No new matter has been added.

Claim 14 has also been amended herein to now recite that the lid is movably attached to the *first wall*, the hinge portion engages the *second wall* and that the first and second wall portions are transverse to one another. These limitations fully supported by applicants' originally filed application with reference, for example, to drawing figure 16 and 18. No new matter has been added.

The Examiner states the following in paragraph 3 of the Office action regarding Moeller:

Moeller teaches a body, a lid, a hinge at portions 424 and 124 ....

The Examiner, thus, takes the position that the Moeller flap 124 and flap panel 424 (see, e.g., Figs. 5 and 11, respectively) meet applicants' "hinge portion" as recited in claim 14. As noted above, however, claim 14 has been amended herein to now include the limitation that the hinge portion is "formed in said second wall". Claim 14 also recites "releasably retaining said lid in said closed position by engaging at least a portion of said hinge portion with at least a portion of said second wall". Accordingly, claim 14, as amended, requires that the hinge portion be formed in the wall that is eventually re-engaged by the hinge portion in order to retain the lid in the closed position.

Turning now to Moeller (e.g., Fig. 5), although the

flap 124 is attached to the lid member 120 and the flap engages the shoulder 164 to secure the lid in the closed position, the flap 124 is not "formed in" the front wall 162 of the Moeller container. In the Moeller container, the flap 124 is always a part of the lid 120 while the wall 162 is formed from a separate piece of paperboard:

The embodiment of FIG. 5 may be erected in part from a conventional one-piece blank from which lid member 120 and base member 140 are formed, connected along hinge line 112. When container 110 is closed, lid member 120 will not overlap base member 140, either on the front or on the sides. As a result, conventional machines may be used to fabricate the outer frame of container 110 without modification. **A separate piece of paperboard, however, is used for inner frame 160**, and is dimensioned so that shoulder 164 is positioned to engage flap 124 on lid member 120.

(Moeller, column 6, lines 33-43, emphasis added)

Accordingly, since all of the elements of claim 14, as amended, are not met by Moeller, claim 14 is not anticipated by Moeller. As noted previously, the standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

Claims 15 and 16 are allowable at least as depending from allowable base claim 14.

Claims 17-19

Claim 17, as amended herein, recites the following:

A container capable of moving between an open condition and a closed condition, said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;  
**a hinge portion formed in said second wall**, said hinge portion being movably attached to said lid;

wherein, in said closed condition, **at least a portion of said hinge portion is engaged with at least a portion of said second wall**; and

wherein said hinge portion is movably attached to a stationary portion via a score line and wherein said stationary portion is attached to said lid.

Claim 17 has been amended in a manner similar to the amendment to claim 14 discussed previously.

Claim 17 recites the following:

**a hinge portion formed in said second wall**

and

**at least a portion of said hinge portion is engaged with at least a portion of said second wall**;

The Examiner states the following in paragraph 3 of

the Office action regarding Moeller:

Moeller teaches a body, a lid, a hinge at portions 424 and 124 ....

The Examiner, thus, takes the position that the Moeller flap 124 and flap panel 424 (see, e.g., Figs. 5 and 11, respectively) meet applicants' "hinge portion" as recited in claim 17. Claim 17, however, now includes the limitation that the hinge portion is "**formed in said second wall**". Claim 17 also recites **at least a portion of said hinge portion is engaged with at least a portion of said second wall**". Accordingly, claim 17, as amended, requires that the hinge portion be formed in the wall that is eventually re-engaged by the hinge portion.

Turning now to Moeller (e.g., Fig. 5), although the flap 124 is attached to the lid member 120 and the flap engages the shoulder 164 to secure the lid in the closed position, the flap 124 is not "formed in" the front wall 162 of the Moeller container. In the Moeller container, the flap 124 is always a part of the lid 120 while the wall 162 is formed from a separate piece of paperboard:

The embodiment of FIG. 5 may be erected in part from a conventional one-piece blank from which lid member 120 and base member 140 are formed, connected along hinge line 112. When container 110 is closed, lid member 120 will not overlap base member 140, either on the front or on the sides. As a result, conventional machines may be used to fabricate the outer frame of container 110 without modification. **A separate piece of paperboard, however, is used for inner frame 160**, and is dimensioned so that shoulder 164 is positioned to engage flap 124 on lid member 120.

(Moeller, column 6, lines 33-43, emphasis added)

Accordingly, since all of the elements of claim 17, as amended, are not met by Moeller, claim 17 is not anticipated by Moeller. As noted previously, the standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

Claim 18 is allowable at least as depending from allowable base claim 17. Claim 19 has been canceled.

Claims 20-23

Applicant's claim 20, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:  
providing said container comprising:  
    a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;  
    a lid movably attached to said first wall;  
    a hinge portion formed in said second wall;  
    a stationary portion formed in said second wall;  
    wherein said hinge portion is movably attached to said stationary portion via a score line; and

wherein said hinge portion is aligned with said stationary portion;

moving said lid to an open position by applying an opening force thereto, wherein said opening force causes said hinge portion to misalign with said stationary portion;

moving said lid to a closed position by applying a closing force thereto;

using said hinge portion to releasably retain said lid in said closed position.

Claim 20 has been amended in a manner similar to the amendment to claim 14 discussed previously.

Claim 20 recites the following:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;

a hinge portion formed in said second wall;

As discussed above; the Examiner takes the position that the Moeller flap 124 and flap panel 424 (see, e.g., Figs. 5 and 11, respectively) meet applicants' "hinge portion" as recited in claim 20.

The Moeller flap 124, however, is not formed in a wall of the container; instead, it is formed in the lid. Accordingly, Moeller does not anticipate claim 20.

Claims 21 and 22 are allowable at least as depending from allowable base claim 20. Claim 23 has been canceled.

Claims 24-27

Applicant's claim 24, as amended herein, recites the following:

A container capable of moving between an open condition and a closed condition, said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;

a hinge portion formed in said second wall;

a stationary portion formed in said second wall;

wherein said hinge portion is movably attached to said stationary portion via a score line;

wherein said container includes a first condition before said container has initially been opened, a second open condition and a third re-closed condition;

wherein, in said first condition, said hinge portion is aligned with said stationary portion;

wherein in said second condition, said hinge portion is misaligned with said stationary portion;

wherein, in said third condition, said hinge portion releasably retains said lid in said re-closed condition.

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Claim 24 has been amended in a manner similar to the amendment to claim 14 discussed previously.

Claim 24 is allowable for at least the same reasons as advanced above with respect to claim 20. In addition, it is noted that claim 24 has been amended to include language (i.e., that the stationary portion is formed in the second wall portion) similar to that appearing in claim 27 which depends therefrom. Since the Examiner has not rejected claim 27 over Moeller alone, the addition of this language to independent claim 24 clearly overcomes the Examiner's rejection.

Claims 25 and 26 are allowable at least as depending from allowable base claim 24. Claim 27 has been canceled.

IV. 35 U.S.C. §102(b) Rejection of Claims 1-3, 8, 9, 14 and 15 over Williamson

Claims 1-3, 8, 9, 14 and 15 stand rejected under 35 U.S.C. §102(b) as being anticipated by Williamson (U.S. 3,073,501). Reexamination and reconsideration are requested.

Claims 1-3

Applicants' claim 1, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least one wall;

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said lid to an open position, in which product can be dispensed from said container, by applying an opening force thereto, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said lid to a closed position by applying a closing force thereto;

releasably retaining said lid in said closed position by engaging at least a portion of said panel with at least a portion of said wall; and

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wherein said container further comprises a sheet of material covering said hole while said container is in said open position.

As noted previously, claim 1 has been amended to now include the limitations previously appearing in dependent claim 3. Accordingly, claim 1 now recites the following:

wherein said container further comprises a sheet of material covering said hole

Although Williamson discloses holes (where the triangles 40, 41 and 42 are removed), there is no disclosure or suggestion in Williamson of a sheet of material covering these holes as now recited in claim 1. Accordingly, since all of the elements of claim 1, as amended, are not met by Williamson, claim 1 is not anticipated by Williamson. As noted previously, the standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

Claim 2 is allowable at least as depending from allowable base claim 1. Claim 3 has been canceled.

Claims 8 and 9

Applicants' claim 8 recites the following:

A container comprising:  
a body portion having at least one wall;  
a lid movably attached to said body portion;  
wherein said container includes a first  
condition before said container has initially been  
opened, a second open condition in which product can  
be dispensed from said container and a third re-  
closed condition;  
wherein, in said first condition, a panel is  
attached to both said at least one wall of said body  
portion and said lid;  
wherein in said second condition, said panel  
remains attached to said lid but has been removed  
from said at least one wall member, thus leaving a  
hole in said at least one wall;  
wherein, in said third condition, at least a  
portion of said panel is releasably engaged with at  
least a portion of said wall; and  
**a sheet of material covering said hole while**  
said container is in said second open condition.

As discussed previously, claim 8 has been amended to now include the limitations previously appearing in dependent claim 10.

Since claim 10 is not rejected as being anticipated by Williamson, the incorporation of claim 10 into claim 8 overcomes the Examiner's rejection.

Claim 9 is allowable at least as depending from allowable base claim 8.

Claims 14 and 15

Applicants' claim 14, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;

a hinge portion formed in said second wall, said hinge portion being movably attached to said lid;

moving said lid to an open position by applying an opening force thereto;

moving said lid to a closed position by applying a closing force thereto; and

releasably retaining said lid in said closed position by engaging at least a portion of said hinge portion with at least a portion of said second wall.

Claim 14 recites the following:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;

a hinge portion formed in said second wall,

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The Examiner apparently takes the position that the triangles 40, 41 and 42 of Williamson meet the "hinge portion" recited in claim 14. Applicants point out, however, that the Williamson lid is attached to the rear wall (as viewed, e.g., in Fig. 4). The triangles 40, 41 and 42 are formed in the front wall (again, as viewed, e.g., in Fig. 5). The Williamson front wall and back wall, however, are parallel to one another and, therefore, are not *transverse* as recited in claim 14. Accordingly, claim 14, as amended herein, is not anticipated by Williamson.

Claim 15 is allowable at least as depending from allowable base claim 14.

V. 35 U.S.C. §102(b) Rejection of Claims 1-3, 8, 9, 14,  
15 and 17-27 over Fleming

Claims 1-3, 8, 9, 14, 15 and 17-27 stand rejected under 35 U.S.C. §102(b) as being anticipated by Fleming (U.S. 2,583,211). Reexamination and reconsideration are requested.

Claims 1-3

Claim 1, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least one wall;

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said lid to an open position, in which product can be dispensed from said container, by applying an opening force thereto, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said lid to a closed position by applying a closing force thereto;

releasably retaining said lid in said closed position by engaging at least a portion of said panel with at least a portion of said wall; and

wherein said container further comprises a

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**sheet of material covering said hole while said container is in said open position.**

As noted previously, independent claim 1 has been amended herein to now include the limitations of dependent claim 3 as highlighted in bold above.

Although Fleming discloses a hole, there is no disclosure or suggestion in Fleming of a sheet of material covering this hole as recited in claim 1. Accordingly, since all of the elements of claim 1, as amended, are not met by Fleming, claim 1 is not anticipated by Fleming. As noted previously, the standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

Claim 2 is allowable at least as depending from base claim 1. Claim 3 has been canceled.

#### Claims 8 and 9

As previously noted, claim 8 has been amended herein to now include the limitations previously appearing in dependent claim 10. Claim 10 has been canceled.

Since claim 10 is not rejected as being anticipated by Fleming, the incorporation of claim 10 into claim 8 overcomes the Examiner's rejection.

Claim 9 is allowable at least as depending from allowable base claim 8.

Claims 14 and 15

Claim 14, as amended herein, recites the following:

A method of opening and closing a container,  
said method comprising:

providing said container comprising:

a body portion having at least a first  
wall and a second wall, said first wall being  
transverse to said second wall;

a lid movably attached to said first wall;

a hinge portion formed in said second  
wall, said hinge portion being movably attached  
to said lid;

moving said lid to an open position by applying  
an opening force thereto;

moving said lid to a closed position by  
applying a closing force thereto; and

releasably retaining said lid in said closed  
position by engaging at least a portion of said  
hinge portion with at least a portion of said second  
wall.

Claim 14, thus, recites first and second walls that  
are transverse to one another, a lid movably attached to  
the first wall and a hinge portion formed in the second  
wall. In Fleming, however, the lid 3 is attached to the  
*same wall* in which the closure 7 is formed. Accordingly,  
since all of the elements of claim 14, as amended, are  
not met by Fleming, claim 14 is not anticipated by  
Fleming. As noted previously, the standard for lack of

novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

Claim 15 is allowable at least as depending from base claim 14.

Claims 17-19

Claim 17, as amended herein, recites the following:

A container capable of moving between an open condition and a closed condition, said container comprising:

a body portion having at least a **first wall and a second wall**, said first wall being transverse to said second wall;

a lid movably attached to said first wall;  
**a hinge portion formed in said second wall**, said hinge portion being movably attached to said lid;

wherein, in said closed condition, at least a portion of said hinge portion is engaged with at least a portion of said second wall; and

wherein said hinge portion is movably attached to a stationary portion via a score line and wherein said stationary portion is attached to said lid.

Claim 17, thus, now recites first and second walls

that are transverse to one another, a lid movably attached to the first wall and a hinge portion formed in the second wall. In Fleming, however, the lid 3 is attached to the same wall in which the closure 7 is formed. Accordingly, since all of the elements of claim 17, as amended, are not met by Fleming, claim 17 is not anticipated by Fleming. As noted previously, the standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

Claim 18 is allowable at least as depending from allowable base claim 17. Claim 19 has been canceled.

Claims 20-23

Applicants' claim 20, as amended herein, recites the following:

A method of opening and closing a container,  
said method comprising:  
providing said container comprising:  
    a body portion having at least a **first**  
    **wall and a second wall**, said **first wall** being  
    **transverse to said second wall**;  
    a lid movably attached to said **first wall**;  
    a hinge portion formed in said **second**  
    **wall**;  
    a stationary portion formed in said **second**

wall;

wherein said hinge portion is movably attached to said stationary portion via a score line; and

wherein said hinge portion is aligned with said stationary portion;

moving said lid to an open position by applying an opening force thereto, wherein said opening force causes said hinge portion to misalign with said stationary portion;

moving said lid to a closed position by applying a closing force thereto;

using said hinge portion to releasably retain said lid in said closed position.

Claim 20, thus, recites first and second walls that are transverse to one another, a lid movably attached to the first wall and a hinge portion formed in the second wall in a manner similar to claim 17, as discussed above. Accordingly, claim 20 is allowable for at least the same reasons set forth above with respect to claim 17.

Claims 21 and 22 is allowable at least as depending from allowable base claim 20. Claim 23 has been canceled.

Claims 24-27

Claim 24, as amended herein, recites the following:

A container capable of moving between an open

condition and a closed condition, said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;

a hinge portion formed in said second wall;

a stationary portion formed in said second wall;

wherein said hinge portion is movably attached to said stationary portion via a score line;

wherein said container includes a first condition before said container has initially been opened, a second open condition and a third re-closed condition;

wherein, in said first condition, said hinge portion is aligned with said stationary portion;

wherein in said second condition, said hinge portion is misaligned with said stationary portion;

wherein, in said third condition, said hinge portion releasably retains said lid in said re-closed condition.

Claim 24, thus, now recites first and second walls that are transverse to one another, a lid movably attached to the first wall and a hinge portion formed in the second wall in a manner similar to claims 17 and 20, as discussed above. Accordingly, claim 24 is allowable for at least the same reasons set forth above with respect to claim 17.

Claims 25 and 26 are allowable at least as depending

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from allowable base claim 24. Claim 27 has been canceled.

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VI. 35 U.S.C. §102(e) Rejection of Claims 1, 5, 7, 8,  
12, 14, 16 and 17 over Block et al.

Claims 1, 5, 7, 8, 12, 14, 16 and 17 stand rejected under 35 U.S.C. §102(e) as being anticipated by Block et al. (U.S. 6,152,360). Reexamination and reconsideration are requested.

Claims 1, 5 and 7

As noted previously, claim 1 has been amended herein to now include the limitations previously appearing in dependent claim 3.

Since claim 3 is not rejected as being anticipated by Block, the incorporation of claim 3 into claim 1 overcomes the Examiner's rejection.

Claims 5 and 7 are allowable at least as depending from allowable base claim 1.

Claims 8 and 12

As noted previously, claim 8 has been amended herein to now include the limitations previously appearing in dependent claim 10.

Since claim 10 is not rejected as being anticipated by Block, the incorporation of claim 10 into claim 8 overcomes the Examiner's rejection.

Claim 12 is allowable at least as depending from allowable base claim 8.

Claims 14 and 16

Applicants' claim 14, as amended herein, recites the following:

A method of opening and closing a container,  
said method comprising:  
    providing said container comprising:  
        a body portion having at least a first  
        wall and a second wall, said first wall being  
        transverse to said second wall;  
        a lid movably attached to said first wall;  
        a hinge portion formed in said second  
        wall, said hinge portion being movably attached  
        to said lid;  
        moving said lid to an open position by applying  
        an opening force thereto;  
        moving said lid to a closed position by  
        applying a closing force thereto; and  
        releasably retaining said lid in said closed  
        position by engaging at least a portion of said  
        hinge portion with at least a portion of said second  
        wall.

Claim 14, thus, recites first and second walls that are transverse to one another, a lid movably attached to the first wall and a hinge portion formed in the second wall. In Block et al., however, the lid 32 is attached to the same wall in which the panel 44 is formed. Accordingly, since all of the elements of claim 14, as amended, are not met by Block et al., claim 14 is not anticipated by Block et al. As noted previously, the

standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

Claim 16 is allowable at least as depending from allowable base claim 14.

Claim 17

Applicants' claim 17, as amended herein, recites the following:

A container capable of moving between an open condition and a closed condition, said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;  
a hinge portion formed in said second wall, said hinge portion being movably attached to said lid;

wherein, in said closed condition, at least a portion of said hinge portion is engaged with at least a portion of said second wall; and

**wherein said hinge portion is movably attached to a stationary portion via a score line and wherein said stationary portion is attached to said lid.**

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Claim 17 has been amended to include the limitations previously appearing in dependent claim 19. Claim 19 has been canceled. Since claim 19 is not rejected as being anticipated by Block et al., the incorporation of claim 19 into claim 17 overcomes the Examiner's rejection.

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VII. 35 U.S.C. §103(a) Rejection of Claims 3, 4, 10 and 11 over Wein in view of Wagner et al.

Claims 3, 4, 10 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wein (U.S. 5,044,503) in view of Wagner et al. (U.S. 4,565,315). Reexamination and reconsideration are requested.

Claims 3 and 4

Claim 4 is allowable at least as depending from allowable base claim 1. Claim 3 has been canceled.

Although, as noted above, the subject matter of canceled claim 3 has been incorporated into independent claim 1, the rejection based on the proposed combination of Wein and Wagner et al. is not applicable to independent claim 1 for the following reasons.

At the outset, applicants assert that there is no teaching or motivation to combine the Wein and Wagner et al. references as proposed by the Examiner. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997).

Applicants further point out that, even the Examiner's proposed combination of references fails to meet all of the elements of claim 1, as now amended. Claim 1, as amended, recites the following:

A method of opening and closing a container,  
said method comprising:

providing said container comprising:

a body portion having at least one wall;

a lid movably attached to said body  
portion;

a panel formed in said at least one wall  
of said body portion;

wherein said panel is attached to said  
lid;

moving said lid to **an open position, in which  
product can be dispensed from said container**, by  
applying an opening force thereto, wherein said  
opening force causes said panel to separate from  
said at least one wall, thereby forming a hole in  
said at least one wall;

moving said lid to a closed position by  
applying a closing force thereto;

releasably retaining said lid in said closed  
position by engaging at least a portion of said  
panel with at least a portion of said wall; and

wherein said container further comprises **a  
sheet of material covering said hole while said  
container is in said open position.**

Claim 1, thus, has been amended to now recite that a sheet of material covers the hole when the container is in the open position, i.e., when product can be dispensed from the container. This limitation is fully supported by applicants' originally filed application with reference, for example, to drawing figures 16, 17, 20 and 21. No new matter has been added.

Clearly, this limitation could not be met even by

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the Examiner's proposed combination of Wein and Wagner et al. since product could not be dispensed from the Wein container if a sheet of material were covering the hole.

Claims 10 and 11

Claim 11 is allowable at least as depending from allowable base claim 8. Claim 10 has been canceled.

Although, as noted above, the subject matter of canceled claim 10 has been incorporated into independent claim 8, the rejection based on the proposed combination of Wein and Wagner et al. is not applicable to independent claim 8 for at least the same reasons as set forth above with respect to independent claim 1. It is noted that claim 8 has been amended in a manner similar to claim 1, as discussed above.

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VIII. 35 U.S.C. §103(a) Rejection of Claims 3, 4, 10  
and 11 over Block in view of Wagner et al.

Claims 3, 4, 10 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Block et al. (U.S. 6,152,360) in view of Wagner et al. (U.S. 4,565,315). Reexamination and reconsideration are requested.

Claims 3 and 4

Claim 4 is allowable at least as depending from allowable base claim 1. Claim 3 has been canceled.

Although, as noted above, the subject matter of canceled claim 3 has been incorporated into independent claim 1, the rejection based on the proposed combination of Block et al. and Wagner et al. is not applicable to independent claim 1 for the following reasons.

At the outset, applicants assert that there is no teaching or motivation to combine the Block et al. and Wagner et al. references as proposed by the Examiner. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997).

Applicants further point out that, even the Examiner's proposed combination of references fails to meet all of the elements of claim 1, as now amended.

Claim 1, as amended, recites the following:

A method of opening and closing a container,  
said method comprising:

providing said container comprising:

a body portion having at least one wall;

a lid movably attached to said body  
portion;

a panel formed in said at least one wall  
of said body portion;

wherein said panel is attached to said  
lid;

moving said lid to an open position, in which  
product can be dispensed from said container, by  
applying an opening force thereto, wherein said  
opening force causes said panel to separate from  
said at least one wall, thereby forming a hole in  
said at least one wall;

moving said lid to a closed position by  
applying a closing force thereto;

releasably retaining said lid in said closed  
position by engaging at least a portion of said  
panel with at least a portion of said wall; and

wherein said container further comprises a  
sheet of material covering said hole while said  
container is in said open position.

As discussed previously, claim 1 now recites that a  
sheet of material covers the hole when the container is  
in the open position, i.e., when product can be dispensed  
from the container. Clearly, this limitation could not  
be met even by the Examiner's proposed combination of  
Block et al. and Wagner et al. since product could not be

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dispensed from the Block et al. container if a sheet of material were covering the hole.

Claims 10 and 11

Claim 11 is allowable at least as depending from allowable base claim 8. Claim 10 has been canceled.

Although, as noted above, the subject matter of canceled claim 10 has been incorporated into independent claim 8, the rejection based on the proposed combination of Block et al. and Wagner et al. is not applicable to independent claim 8 for at least the same reasons as set forth above with respect to independent claim 1. It is noted that claim 8 has been amended in a manner similar to claim 1, as discussed above.

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**IX. Other Claim Amendments not Discussed Above**

In claims 14, 16 and 17, the term "hinge" has been amended to read "hinge portion". This amendment is provided for clarification purposes and to provide consistency with the terminology as used in the written specification.

In view of the above, all of the claims are now believed to be in condition for allowance. Re-examination and reconsideration are requested.

Respectfully submitted,  
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Version with Markings to show Changes Made

In the Claims:

Claim 1 has been amended as follows:

1. (once amended) A method of opening and closing a container, said method comprising:

providing said container comprising: /

a body portion having at least one wall; /

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said lid to an open position, in which product can be dispensed from said container, by applying an opening force thereto, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said lid to a closed position by applying a closing force thereto;

releasably retaining said lid in said closed position by engaging at least a portion of said panel with at least a portion of said wall; and

wherein said container further comprises a sheet of material covering said hole while said container is in said open position. /

Claim 4 has been amended as follows:

4. (once amended) The method of claim [3] 1 wherein said sheet of material is a sheet of fluid impervious

material.

Claim 8 has been amended as follows:

8. (once amended) A container comprising:  
a body portion having at least one wall;  
a lid movably attached to said body portion;  
wherein said container includes a first condition  
before said container has initially been opened, a second  
open condition in which product can be dispensed from  
said container and a third re-closed condition;  
wherein, in said first condition, a panel is  
attached to both said at least one wall of said body  
portion and said lid;  
wherein in said second condition, said panel remains  
attached to said lid but has been removed from said at  
least one wall member, thus leaving a hole in said at  
least one wall;  
wherein, in said third condition, at least a portion  
of said panel is releasably engaged with at least a  
portion of said wall; and  
a sheet of material covering said hole while said  
container is in said second open condition.

Claim 11 has been amended as follows:

11. (once amended) The container of claim [10] 8  
wherein said sheet of material is a sheet of fluid  
impervious material.

Claim 14 has been amended as follows:

14. (once amended) A method of opening and closing a container, said method comprising:

providing said container comprising: /

a body portion having at least [one] a first wall and a second wall, said first wall being transverse to said second wall; / /

a lid movably attached to said first wall [body portion]; / /

(<sup>350</sup> a hinge portion formed in said second wall,) / /  
said hinge portion being movably attached to said lid; / /

moving said lid to an open position by applying an opening force thereto; /

moving said lid to a closed position by applying a closing force thereto; and /

releasably retaining said lid in said closed position by engaging at least a portion of said hinge portion with at least a portion of said second wall. /

Claim 16 has been amended as follows:

16. (once amended) The method of claim 14 wherein said hinge portion is movably attached to a stationary portion via a score line and wherein said stationary portion is attached to said lid. /

Claim 17 has been amended as follows:

17. (once amended) A container capable of moving between an open condition and a closed condition, said

container comprising:

a body portion having at least [one] a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall [body portion];

a hinge portion formed in said second wall, said hinge portion being movably attached to said lid;

wherein, in said closed condition, at least a portion of said hinge portion is engaged with at least a portion of said second wall; and

wherein said hinge portion is movably attached to a stationary portion via a score line and wherein said stationary portion is attached to said lid.

Claim 20 has been amended as follows:

20. (once amended) A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least [one] a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall [body portion];

a hinge portion formed in said second wall;

a stationary portion formed in said second wall;

wherein said hinge portion is movably attached to said stationary portion via a score line; and

wherein said hinge portion is aligned with said stationary portion;

moving said lid to an open position by applying an opening force thereto, wherein said opening force causes said hinge portion to misalign with said stationary portion;

moving said lid to a closed position by applying a closing force thereto;

using said hinge portion to releasably retain said lid in said closed position.

Claim 24 has been amended as follows:

24. (once amended) A container capable of moving between an open condition and a closed condition, said container comprising:

a body portion having at least [one] a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall [body portion];

a hinge portion formed in said second wall;

a stationary portion formed in said second wall, wherein said hinge portion is movably attached to said stationary portion via a score line; [and]

wherein said container includes a first condition before said container has initially been opened, a second open condition and a third re-closed condition;

wherein, in said first condition, said hinge portion is aligned with said stationary portion;

wherein in said second condition, said hinge portion is misaligned with said stationary portion;

wherein, in said third condition, said hinge portion releasably retains said lid in said re-closed condition.